



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0131]

RIN 1625-AA00

### Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to amend its safety zones established for recurring marine events and fireworks displays that take place within the Fifth Coast Guard District area of responsibility. This Notice of Proposed Rule Making (NPRM) addresses a minor revision to the listing of events that informs the public of regularly scheduled fireworks displays that require additional safety measures provided by regulations. Through this proposed final rule, the current list of recurring marine events requiring safety zones would be updated with two additional events that take place in the Sector Virginia area of responsibility. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-0131 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY**

**INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, email LCDR Ashley Holm, Sector Virginia, Waterways Management Division, U.S. Coast Guard, Telephone: 757-668-5580, email: [viriniawaterways@uscg.mil](mailto:viriniawaterways@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATCOM	Patrol Commander
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

The Coast Guard regularly updates the regulations for recurring safety zones within the Fifth Coast Guard District at 33 CFR 165.506, and its respective tables. These recurring safety zones are for fireworks displays that take place either on or over the navigable waters of the Fifth Coast Guard District as defined at 33 CFR 3.25. These regulations were last amended October 15, 2021 (86 FR 57358). Since then, two recurring marine events within the Fifth Coast Guard District have changed in a way that require establishment of a safety zone for protection of life, property and the environment. Hazards associated with these events include potential falling debris and possible fire, explosion, projectile, and burn hazards. The purpose of this rulemaking is to ensure the safety of persons, vessels, and the navigable waters within close proximity to fireworks displays before, during, and after the scheduled events.

The Coast Guard is conducting this rulemaking under authority in 46 U.S.C. 70034 (previously, 33 U.S.C. 1231). The Secretary has delegated ports and waterways authority, with certain reservations not applicable here, to the Commandant via DHS

Delegation No. 0170.1(II) (70). The Commandant has further delegated these authorities within the Coast Guard as described in 33 CFR 1.05-1 and 6.04-6.

### **III. Discussion of Proposed Rule**

The Coast Guard is proposing to establish two new safety zones to cover waters in the vicinity of certain fireworks displays in order to ensure public safety on the waterway during these events.

The first safety zone would be enforced on the third or fourth Saturday in July of each year, beginning in July 2022, between 9:30 p.m. and 10 p.m. and cover all waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37'51" N., longitude 078°32'50" W., located near the center span of the State Route 15 Highway Bridge.

The second safety zone would be enforced on the evening of the first or second Saturday or Sunday in June of each year, beginning in June 2022, between 9:30 p.m. and 10 p.m. and cover the waters all waters of the Elizabeth River within a 500-yard radius of approximate position of the fireworks barge at latitude 36°50'41" N., longitude 076°17'47" W., located near Town Point Park in Norfolk, VA.

Dates and times are subject to change in accordance with existing regulatory text found in 33 CFR 165.506(c) .

The duration of the zones are intended to ensure the safety of vessels and these navigable waters before, during, and after each scheduled fireworks display. No vessel or person would be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a

number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the short amount of time that vessels will be restricted from certain parts of the waterway and the small size of these areas that are usually positioned away from high vessel traffic zones. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated areas. Advance notifications will also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and Marine Safety Information or Security Bulletins so mariners can adjust their plans accordingly. Notifications to the public for most events will typically be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these safety zones will only be enforced for limited durations, less than 24 hours, occurring on specific dates throughout the year.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: the Coast Guard will ensure that small entities are able to operate in the areas where events are occurring to the extent possible while ensuring the safety of the public. The enforcement period will be short in duration and permission to enter, remain in, or transit through these regulated areas during the enforcement may be given when deemed safe to do so by the event PATCOM on scene.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with

the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 165 that apply to recurring safety zones for fireworks displays that take place either on or over the navigable waters of the United States. Some events by their nature may introduce potential for adverse impact on the safety or other interest of waterway users or waterfront infrastructure within or close proximity to the event area. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01– 001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0131 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**



1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 1.2.

2. In §165.506, amend table 3 in paragraph (h)(3) by adding entries 12 and 13 to read as follows:

**§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.**

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(3) Coast Guard Sector Virginia—COTP Zone

TABLE 3 TO PARAGRAPH (h)(3)

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12	July—3rd or 4th Saturday	John H. Kerr Reservoir, Clarksville, VA; Safety Zone	All waters of John H. Kerr Reservoir within a 400-yard radius of approximate position latitude 36°37'51" N., longitude 078°32'50" W., located near the center span of the State Route 15 Highway Bridge.
13	June—first or second Saturday or Sunday	Elizabeth River, Town Point Reach, Norfolk, VA; Safety Zone	All waters of the Elizabeth River, Town Point Reach within a 500-yard radius of approximate position of the fireworks barge latitude 36°50'41" N., longitude 076°17'47" W., in vicinity of Town Point Park in Norfolk, VA.

Dated: March 14, 2022.

L. M. DICKEY,  
Rear Admiral, U.S. Coast Guard,  
Commander, Fifth Coast Guard District.  
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